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February 13, 2006

**DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Case Name: Personnel Security Hearing

Date of Filing: September 13, 2005

Case Number: TSO-0290

This Decision concerns the eligibility of XXXX XXXXXX XXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1/</sup> A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this Decision, I have determined that the individual's security clearance should not be restored at this time.

**I. Background**

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

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<sup>1/</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

The individual was granted a DOE security clearance after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that her access authorization was being suspended pending the resolution of certain derogatory information that created substantial doubt regarding her continued eligibility. This derogatory information is described in a Notification Letter issued to the individual on July 28, 2005, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j). More specifically, the Notification Letter alleges that the individual has: 1) “an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in judgment and reliability [of the individual]”; and, 2) “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. §§ 710.8(h) and (j). (Criterion H and Criterion J, respectively). The bases for these findings are summarized below.

The Notification Letter states on February 14, 2005, the individual was evaluated by a DOE consultant-psychiatrist (DOE Psychiatrist) who diagnosed the individual as suffering from Substance Abuse, Alcohol (Alcohol Abuse), based upon diagnostic criteria set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR)*. According to the DOE Psychiatrist, this is a mental condition that causes or may cause a significant defect in the individual’s judgment or reliability. The Notification letter further describes six alcohol-related incidents involving the individual, including an arrest in June 2004, for Aggravated Battery, and two arrests for Driving While Intoxicated (DWI), in August 1998 and September 1977.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on September 13, 2005, the individual exercised her right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On September 15, 2005, I was appointed as Hearing Officer. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, I established a hearing date. At the hearing, DOE Security called the DOE Psychiatrist as its sole witness. The individual testified on her own behalf, and also called her daughter and a close friend. The transcript taken at the hearing will be hereinafter cited as “Tr.” Documents that were submitted during this proceeding by DOE Security and the individual constitute exhibits to the hearing transcript and will be cited respectively as “DOE Exh.” and “Ind. Exh.”

### Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual has had six alcohol-related incidents, beginning with an arrest in September 1977 for DWI. The individual was able to mitigate the concerns of DOE Security with regard to this arrest and was granted a security clearance in February 1981, after gaining employment with a DOE contractor. There were no reported incidents until ten years later when the individual was arrested in October 1991 on a Charge of Domestic Violence. On this occasion, the individual was arrested after consuming three to four beers and allegedly beating up her boyfriend. The charges were dismissed and following a Personnel Security Interview (PSI) of the individual, examining the circumstances of the arrest, the individual was allowed to retain her security clearance. Three years later, in August 1994, the individual was arrested for Child Abuse Negligently Permitted after her sister's boyfriend pulled out a knife in the presence of the individual's children. The individual was not in the house at the time but admitted to having consumed five or six beers on the night of the arrest. A PSI concerning this arrest was conducted in April 1996. During this PSI, the individual stated that she had abstained from alcohol during the 1994-1995 time frame while going to alcohol counseling, and that she drank only in moderation after completing counseling. The security concerns relating to the individual's use of alcohol were therefore deemed resolved and she was allowed to retain her security clearance.

In November 1997, the individual was identified as a suspect, but not arrested for Domestic Violence and Battery on a Household Member on a complaint filed by the individual's sister following an altercation at the individual's home. The individual admitted to consuming alcohol prior to the incident. The individual's sister withdrew the complaint and the individual was not charged. In August 1998, the individual was arrested on a charge of Aggravated DWI. On this occasion, the individual reportedly consumed eight beers at a bar before driving home and hitting a car that had stopped in the middle of the road over an incline where the car could not be seen. The individual admitted to the arresting officer that she had been drinking and failed the field sobriety test. The Aggravated DWI charge against the individual was later reduced to a misdemeanor charge and ultimately dismissed, upon a finding by the court that the driver of the car blocking the road was at fault for causing the accident. Because of the eventual outcome of the case, the individual chose not to report the Aggravated DWI arrest to DOE Security. However, the arrest was uncovered during the periodic reinvestigation of the individual, and a PSI was conducted in June 2002 regarding the 1998 Aggravated DWI arrest, the November 1977 complaint incident, and concerns that had emerged involving the individual's finances. Following this PSI, the individual was again allowed to retain her security clearance.

Finally, in June 2004, the individual was arrested for Aggravated Battery Upon a Household Member. On the day of this arrest, the individual went to court to secure an order against her ex-husband for payment of overdue child support payments. Upon returning home, she found her live-in boyfriend in an intoxicated condition and angry because he had been unable to contact the individual that day. The individual herself

had two or three beers while trying to explain why she went to court. The individual's boyfriend reportedly became enraged upon finding out that the individual had met with her ex-husband, and a violent argument ensued. The individual's boyfriend tried to hit the individual, pulled her hair and then threw her on the bed. The individual responded by hitting her boyfriend in the ear with a bag of bathroom toiletries lying nearby, causing minor injury and bleeding. The individual's boyfriend left the house and went to his sister's house where his sister called the police. Although the individual was arrested, her boyfriend did not press charges and the case was dismissed. DOE Security determined nonetheless, following a PSI conducted in October 2004, that the individual should be referred to the DOE Psychiatrist due to unresolved concerns regarding the individual's use of alcohol.

The DOE Psychiatrist reviewed the individual's personnel security file and performed a psychiatric interview and evaluation of the individual on February 14, 2005. In his report issued on March 1, 2005, the DOE Psychiatrist set forth his opinion that the individual meets the *DSM-IV TR* criteria for Substance Abuse, Alcohol. The DOE Psychiatrist further states in his report that the individual's Alcohol Abuse is an illness or mental condition which causes or may cause a significant defect in the individual's judgment or reliability, until such time as the individual is able to demonstrate adequate evidence of rehabilitation or reformation. In this regard, the DOE Psychiatrist recommended either of the following as evidence of rehabilitation: 1) total abstinence from alcohol and non-prescribed controlled substances for two years with 100 hours of attendance at Alcoholics Anonymous (AA), with a sponsor, over a minimum of one year, or 2) total abstinence for three years with satisfactory completion of a professionally-led alcohol treatment program, with aftercare, over a minimum of six months. As adequate evidence of reformation, the DOE Psychiatrist recommended two or three years of abstinence if the individual completes either of the two rehabilitation programs, or five years of abstinence if she does not.

## II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a

security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored since I am unable to conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

#### A. Derogatory Information

The DOE Psychiatrist diagnosed the individual with Alcohol Abuse based upon diagnostic criteria set forth in the *DSM-IV TR*. DOE Exh. 15 at 11-12. The *DSM-IV TR* generally provides that a diagnosis of Alcohol Abuse is supported when the individual manifests one of four behaviors within a twelve-month period: 1) recurrent failure to fulfill major role obligations at work, school or home, 2) recurrent use in situations in which it is physically hazardous, 3) recurrent substance-related legal problems, and 4) continued use despite social or interpersonal problems. *See id.* In the case of the individual, the DOE Psychiatrist determined that the individual met the third criterion (Criterion A3) based upon the individual's six alcohol-related incidents including her arrest for Aggravated Battery in June 2004, which occurred less than one year before seeing the DOE Psychiatrist. *Id.* The DOE Psychiatrist's diagnosis is supported by the individual's testimony at the hearing. The individual openly acknowledged that she has an alcohol problem that will require abstinence and counseling to overcome. *See Tr.* at 89-90, 93, 119. As discussed in the succeeding section of this decision, the individual has begun seeing an alcohol counselor (Alcohol Counselor) who shares the opinion of the DOE Psychiatrist, stating in his letter entered into the record that "[the individual] does meet the criteria for alcohol abuse and is able to recognize this as being a problem for her." Ind. Exh. 2.

I therefore find that DOE Security properly invoked Criteria H and J in suspending the individual's security clearance. The DOE Psychiatrist's diagnosis of Alcohol Abuse is corroborated by the individual's admissions, her history of legal difficulties relating to use of alcohol, and by her Alcohol Counselor. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. *See, e.g., Personnel Security Hearing*, Case No. TSO-0168, 29 DOE ¶ 82,807 (2005); *Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (affirmed by OSA, 1995). In these cases, it was recognized that the excessive use of alcohol might impair an individual's judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *Id.* Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation or reformation to mitigate the security concerns of DOE Security.

#### B. Mitigating Evidence

The individual testified that while she has had episodes of alcohol abuse in past years, she had been able to control her drinking until February 2004 when her boyfriend resumed living with her, after being gone for almost a year. Tr. at 56-58, 61. According to the individual, her boyfriend drinks to intoxication on a daily basis and influenced her to drink on a regular basis, sometimes to excess. Tr. at 33, 58.<sup>2/</sup> This culminated in June 2004, when the individual came home to find her boyfriend once again intoxicated and a fight erupted when her boyfriend violently confronted the individual about her whereabouts. Tr. at 74-78. The individual admits to having consumed three beers prior to the altercation. While the individual was arrested as a result of the incident, the individual has taken considerable steps to address her problem with alcohol since that time, as described below.

The individual evicted her boyfriend from her home following the June 2004 incident and she no longer associates with him. Tr. at 84-86. The individual then substantially reduced her drinking and became actively involved in caring for her grandson. Tr. at 23-25. The individual testified that she attended six AA meetings in late 2004. Tr. 100-101. The individual reported, however, that she discontinued AA because it made her feel depressed. *Id.* The individual made the decision to stop drinking altogether on New Year's Day 2005, and has consumed no alcohol since that time. Tr. at 81-82,

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<sup>2/</sup> The individual testified that her boyfriend did not work a regular job but secured temporary jobs as a handyman. Her boyfriend was therefore often home and drinking during the day. Tr. at 124.

87. Thus the individual had achieved eleven months of sobriety at the time of the hearing.

After her receipt of the DOE Psychiatrist's report in the spring of 2005, the individual committed herself to seeking alcohol treatment. The individual testified that she recognized her alcohol problem after reading the DOE Psychiatrist's report and made an appointment with her Employee Assistance Program (EAP) counselor. Tr. at 90-91. After two sessions, in May and in June 2005, the EAP counselor referred the individual to the Alcohol Counselor. *See* Ind. Exh. 1; Tr. at 94. The individual sees the Alcohol Counselor once a month, and had gone to three sessions with the Alcohol Counselor at the time of the hearing. Ind. Exh. 2.

The Alcohol Counselor determined, however, that prior to specifically treating the individual for her Alcohol Abuse, the individual's "issues with trauma were the primary concern." Ind. Exh. 2. The Alcohol Counselor therefore referred the individual to a therapist (Therapist) to address these issues. The Therapist submitted a letter, and the individual confirmed during her testimony, that the Therapist is treating the individual for lingering depression and self-esteem issues stemming from child abuse suffered by the individual. Ind. Exh. 3. According to the individual, her Alcohol Counselor "thinks I have two problems, one with the mental health childhood issues and one with the alcohol abuse issue." Tr. at 110.<sup>3/</sup> The individual had been to only one session with the Therapist at the time of the hearing, but has been scheduled to see the Therapist every two weeks. Ind. Exh. 3; Tr. at 110-111.

Under the treatment plan laid out by her Alcohol Counselor, the individual will have six sessions with the Therapist and then go into a twelve-step treatment program with the Alcohol Counselor to address her Alcohol Abuse. Tr. at 112-113. The twelve-step program outlined by the Alcohol Counselor involves weekly group therapy sessions and could take as long as a year to complete, depending on the individual. Tr. at 113-114. The individual testified that she feels good about the positive changes she has made in her life. Tr. at 116. I found the individual forthright and sincere in stating her intention to remain abstinent and undergo the recommended treatment program: "I do realize I have a problem, and I'm doing something about it, and it might take me, like I say, years to even fix it." Tr. at 125.

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<sup>3/</sup> The individual's family background and traumatic childhood were also a concern to the DOE Psychiatrist and are described in his report. *See* DOE Exh. 15 at 9-10. According to the information reviewed by the DOE Psychiatrist, the individual was born into a large family of nine brothers and three sisters. The individual's father had a history of alcohol abuse and her mother was incapacitated by tuberculosis. The individual was therefore required to live at different times with her two aunts, one of which abused her. The individual was later taken from the aunt and placed in foster care in a neighboring state. *Id.*

Upon hearing the testimony of the individual, the DOE Psychiatrist commended the individual for her progress in seeking treatment for her Alcohol Abuse. However, the DOE Psychiatrist expressed his opinion that the individual had not yet achieved adequate rehabilitation or reformation, with eleven months of sobriety at the time of the hearing and having only begun the treatment program recommended by her Alcohol Counselor. Tr. at 129. Although the DOE Psychiatrist somewhat relaxed the requirements stated in his report, he maintained his position that the individual requires two years of sobriety coupled with her present treatment program to demonstrate adequate rehabilitation or reformation from her Alcohol Abuse. Tr. at 133-34. Under the circumstances of this case, I find it appropriate to defer to the opinion of the DOE Psychiatrist and I find, accordingly, that the individual has not yet overcome the security concerns associated with her past use of alcohol and diagnosis of Alcohol Abuse. *See Personnel Security Hearing*, Case No. VSO-0359, 28 DOE ¶ 82,768 (2000), *aff'd*, *Personnel Security Review*, 28 DOE ¶ 83,016 (2001); *Personnel Security Hearing*, Case No. TSO-0011, 28 DOE ¶ 82,912 (2003); *cf. Personnel Security Hearing*, Case No. TSO-0001, 28 DOE ¶ 82,911 (2003).

### III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(h) and (j) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has failed to mitigate the security concerns associated with her prior use of alcohol and diagnosis of Alcohol Abuse. I am therefore unable to find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown  
Hearing Officer  
Office of Hearings and Appeals

Date: February 13, 2006